IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.11.2006

CORM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
and
THE HON'BLE MR. JUSTICE S. TAMILVANAN

Writ Appeal No.3382 of 2002
and MP.No.1 of 2006

Deputy Secretary to Government
of India, Ministry of Home Affairs
P.F. Division, 1st floor
L.N. Bhavan, New Delhi 110 003. .. Appellant

Vs.

1. Parvathiammal

2. The State of Tamil Nadu rep.
by the Deputy Secretary to Government
(Political Pension-I) Department
Secretariat
Chennai 600 009. .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 13.03.2002 passed by His Lordship the Hon'ble Mr. Justice V. Kanakaraj in Writ Petition No.11206 of 2001, petition presented under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mnadamus, calling for the records pertaining to letter No.129/601/81.F.F.(SI) dated 06.09.2000 issued by the 1st respondent quash the same and direct the 1st respondent to sanction Swatantra Samman Pension to the petitioner.

For appellant : Mr. P. Mahadevan,SCGSC
For respondents : Mr. T.M. Hariharan for R.1
Mr. P. Subramanian
Govt., Advocate for R.2

JUDGMENT

(Judgement of the Court was delivered by P.SATHASIVAM,J.)

The above writ appeal is directed against the order of the learned single Judge dated 13.03.2002 made in W.P.No.11206 of 2001, in and by which the learned Judge accepted the case of the petitioner, and directed the Central Government to sanction Swatantrata Sainik Samman

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Pension (in short "SSS Pension") from the date of her application, viz., 01.06.1999.

2. The Deputy Secretary to Government of India, Ministry of Home Affairs, New Delhi, is the appellant herein. The writ petitioner/first respondent herein, approached this Court challenging the letter of the Government of India dated 06.09.2000 declining to sanction SSS Pension to her. According to the writ petitioner, her husband, Late Ramiah Mudaliar was a Freedom Fighter. He was charged by the British Government during 1942-1943 for participating in the freedom movement and detention order was passed against him, but he evaded arrest on the advice of the leaders and remaind in the underground for a year. He also participated in the Quit-India Movement and again remaind in the underground for a year. After the death of her husband, the petitioner approached the second respondent for SSS Pension with the available records. She also made an application for pension on 27.04.1997 and 12.05.1998. Her application was returned by the appellant herein on 18.06.1998, seeking certain clarifications. Then, she applied to the Chief Judicial Magistrate, Madurai for getting certified copies of some documents from the said Court. But, her application was returned stating that they were not available. Later, with the available documents and certificate obtained from one Mayandi Bharathi, a Freedom Fighter, she submitted her application on 01.06.1999. She also applied to Archives Department, Chennai for the past records pertaining to 1942-1943, but she was informed that the records were in damaged condition and hence the particulars could not be furnished. Ultimately, the Government of India, informed by letter dated 05.11.1999 that her request cannot be considered. Thereafter, she obtained Xerox copy of the relevant pages of the book "Madurai District Martyr's Souvenir", which has the reference as to the participation of her husband in the freedom movement and submitted the same to the State Government. The State Government, in their proceedings dated 11.08.2000, recommended the case of the petitioner for grant of SSS Pension to the appellant herein. However, the appellant, Government of India, by proceedings dated 06.09.2000, after finding that the writ petitioner is not eligible for SSS Pension, rejected her case. Hence, the writ petition.

3. On behalf of Government of India, the Under Secretary, Ministry of Home Affairs, filed a counter affidavit disputing various averments made by the petitioner. It is stated that inasmuch as the petitioner has applied for SSS Pension without required documents, viz., eligibility letter/proceedings, they have no other option, except to reject her claim.

4. The learned Judge, by order dated 13.03.2002, on placing reliance on several decisions of the Supreme Court as well as this Court, accepted the case of the petitioner and directed the Central Government to sanction SSS Pension in favour of the petitioner from the date of her application, viz., 01.06.1999. Questioning the said order, Government of India has filed the present appeal.

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5. Heard the learned senior Central Government standing counsel for the appellant and the learned counsel for the respondents.

6. The point for consideration in this appeal is, whether the writ petitioner has made out a case for grant of SSS Pension and the learned Judge is right in accepting her case?

7. To strengthen her case, the writ petition/first respondent herein filed several documents in the form of typed set of papers. We verified all those documents filed by the first respondent in the appeal. The first document is, Certificate of Suffering dated 26.05.1984 issued by one Dr. T. Kannan, shows that the husband of the petitioner, viz., Ramiah Mudaliar, was a Freedom Fighter and to escape from the execution of detention order, he deserted for a period of one year. He further certified that the husband of the petitioner participated in Quit-India Movement. The certificate also shows that he remained in the underground, not voluntarily, but to escape from the orders of the British Government.

8. On 09.09.1999, the writ petitioner, Tmt.Parvathiammal made an application to the District Archives Department, Madurai, seeking certain documents relating to her husband Ramiah Mudaliar, particularly with reference to his involvement in freedom struggle, his underground life, cases filed against him, etc. By letter dated 10.09.1999, one Mr. Sundhara Pandian, Research Officer, District Archives, Madurai sent a reply to the effect that the documents sought for are not available due to efflux of time and conveyed his inability to supply copies of the same. The said letter is available at page 5 of the typed set of papers filed by the first respondent. Similar was the response by the Government Public Department to the request of the writ petitioner, vide letter of the Government, available at page 6 of the same typed set of papers.

9. Next document relied on by the learned counsel for the first respondent is, Letter No.37655/PP.I(2)/99-4 Public (Political Pension-I) Department, Secretariat, Chennai 9, dated 30.09.1999, a letter issued by the Deputy Secretary to Government of Tamil Nadu to the Deputy Secretary to Government of India, Ministry of Home Affairs, New Delhi 3, where after referring the involvement of the petitioner's husband, Late K. Ramiah Mudaliar in freedom movement and the fact of non-availability of records, finally it is stated that,

> "Inasmuch as the petitioner has submitted personal knowledge certificate with non-availability or records certificate in support of her request for grant of SSS pension as required under the Scheme, I am directed to request that the Government of India may kindly be consider her case favourably".

The above said letter is available at pages 8 and 9 of the typed set of papers. While so, by letter dated 05.11.1999, the Government of India,

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Ministry of Home Affairs informed the petitioner Tmt. R. Parvathiammal that the Government of Tamil Nadu had simply forwarded her case for consideration without recommendation.

10. In the light of the above materials and the letter of the State Government dated 30.09.1999, we are unable to accept the stand taken by the Government of India, that the Government of Tamil Nadu has simply forwarded and not recommended her case. On the other hand, as pointed out earlier, after giving all the details in paragraphs 1 to 3 of the letter dated 30.09.1999, finally, the Deputy Secretary to Government, Public (Political Pension I) Department, Government of Tamil Nadu, requested the Government of India to consider the case of the petitioner favourably.

11. In addition to the same, it is brought to our notice that the name of Ramiah Mudaliar (husband of the petitioner) is found available in the book "Madurai District Martyr's Souvenir". The typed set contains Xerox copy of the relevant pages of the book showing that Ramiah Mudaliar had participated in the freedom movement, particularly Quit-India Movement and also remained in underground for a considerable period. In the same book, the photograph of Ramiah Mudaliar is available, which is clear from page 15 of the typed set of papers filed by the writ petitioner. In fact, the State Government itself forwarded the above particulars, viz., Xerox copy of the relevant pages of the book, "Madurai District Martyr's Souvenir", written by R. Chidambaram Bharathi and Srinivasa Varadhan, which contains the information regarding participation of Late Ramiah Mudaliar in the freedom struggle and his underground suffering in the year 1943. By enclosing those details, the Deputy Secretary, Public (Political Pension I) Department, Government of Tamil Nadu requested the Ministry of Home Affairs to consider the representation of the petitioner for grant of SSS Pension. The letter which is available at page 16 of the typed set of papers also shows that a copy has been marked to the writ petitioner. In spite of the abundant and acceptable materials, it is unfortunate that Government of India has rejected the claim of the petitioner.

12. We also verified the salient features of SSS Pension and eligibility criteria which are available at page 17 of the typed set of papers filed by the appellant. On going through those conditions/eligibility criteria and the relevant materials/documents which we have discussed in the earlier part of our order, we hold that the writ petitioner has made out a case for grant of SSS Pension. Considering the fact that the writ petitioner has been fighting for pension for several years, that too, based on the recommendation of the State Government, instead of remitting the matter back to the Government of India for reconsideration, we are of the view that ends of justice would be met by directing the Government of India, appellant herein, to grant SSS Pension as claimed by her from the date of filing of the writ petition, viz., April, 2001. The appellant is directed to pass necessary orders as directed above within a period of six weeks from the date of receipt of copy of this order.

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In the result, with the above direction, the writ appeal is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Deputy Secretary to Government
   State of Tamil Nadu
   (Political Pension-I) Department
   Secretariat, Chennai 600 009.

2. The Deputy Secretary to Govt. of India,
   Ministry of Home Affairs,
   P.F.Division, I Floor, L.N.Bhavan,
   New Delhi - 110003.

1 cc To Mr.T.M.Hariharan, Advocate, SR.55324.
1 cc To Mr.P.Mahadevan, Sr.CGSC, SR.54921.

W.A.No.3382 of 2002

MDR(CO)
RVL 17.11.2006

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